IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8198 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHAMMED JAFAR SITABBHAI SHEIKH

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner

MR KT DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 14/03/2000

ORAL JUDGEMENT

#. The petitioner has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by Commissioner of Police, Ahmedabad City, Ahmedabad, in exercise of powers under Section 3(2) of the PASA Act,

dated August 18, 1999.

#. The grounds of detention indicate that the detaining authority took into consideration 4 offences registered against the petitioner under the Indian Penal Code with Kagdapith Police Station. The detaining authority also took into consideration the statements of two anonymous witnesses in respect of two incidents that occurred on 19th July, 1999 and 28th July, 1999. The detaining authority exercised powers under Section 9(2) of the PASA Act and has not disclosed the identity of those witnesses. The detaining authority recorded that the activities of the petitioner are detrimental to public order and that he is required to be immediately prevented from pursuing his activities. The detaining authority also considered the possibility of resorting to less drastic remedies, but came to conclusion that resorting to such less drastic remedies under ordinary laws may not prove to be efficacious and, therefore, detention under PASA is the only remedy that can be resorted for immediately preventing the petitioner from pursuing his illegal and anti-social activities.

#. The petitioner has challenged this order of detention on various counts. However, learned advocate for the petitioner has restricted his arguments to the fact that the subjective satisfaction recorded by the detaining authority for the need for exercise of powers under Section 9(2) of the PASA Act, cannot be considered as genuine. In order to substantiate this submission, learned counsel submitted that the statements of two anonymous witnesses were verified by the detaining authority on 18th August, 1999 and the order of detention is passed on that very same day. Learned counsel submitted, therefore, that there was no time for the detaining authority to give consideration to the aspect of correctness and genuineness of the facts stated by the witnesses and the fear expressed by the witnesses, respectively, in their statements. Learned counsel for the petitioner therefore, submitted that, in light of the decision of a Division Bench of this Court in the case of Kalidas Chandubhai Kahar v. State of Gujarat & Ors. 1993 (2) GLR 1659, this petition may be allowed.

#. Mr. K.T.Dave, learned Assistant Government Pleader, has opposed this petition. He submitted that the authority has acted diligently and quickly and the quickness on the part of the authority may not be considered as non-application of mind. He, therefore, urged that the petition may be dismissed.

#. Having regard to the rival side contentions, it is evident that the statements of anonymous witnesses were recorded on 16th and 17th August, 1999. These two statements were verified by the detaining authority on 18th August, 1999 and the order in question came to be passed on that very day, i.e. on 18th August, 1999. This Court is at a loss to appreciate how the detaining authority could have recorded a satisfaction about correctness of the allegations made in the statements about the incidents and how the detaining authority recorded the satisfaction about the genuineness of the fear expressed by the witnesses, as there appears nothing except the statements of these two witnesses recorded on 16th August, 1999 and on 17th August, 1999. There appears not, any other contemporaneous material which could have provided ground for arriving at satisfaction for the detaining authority for the need of exercise of powers under Section 9(2) of the PASA Act. No affidavit in reply is filed by the detaining authority.

#. In light of the decision in the case of Kalidas Chandubhai Kahar (Supra), the power exercised by the detaining authority under Section 9(2) of the PASA Act would stand vitiated. In that case, the order was passed on the next day of the verification of the statements and still the Division Bench held that it was a wrong exercise of powers under Section 9(2), resulting into the detenu's right of making an effective representation under Article 22(5) of the Constitution.

#. In the instant case, the detaining authority has exercised powers under Section 9(2) of the PASA Act on that very day. In fact, the statements of anonymous witness no.2 was recorded on 17th August, 1999. Thereafter, the proposal must have been made by the sponsoring authority and, thereafter, the verification must have taken place. This would hardly leave any time for the detaining authority to arrive at a genuine subjective satisfaction for the need for exercise of powers under Section 9(2) of the PASA Act. Once exercise of that power under Section 9(2) is found to be vitiated, it would have a direct bearing on the right of the detenue of making an effective representation. The detention, therefore, cannot be permitted to be continued. The order stands vitiated. The petition deserves to be allowed on this ground alone.

#. In view of the above discussion, the petition is allowed. The impugned order of detention dated August 18, 1999 passed against the detenue - Mohammed Jafar

Sitabhai Sheikh, is hereby quashed. The detenue is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L.DAVE, J.]

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